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# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

FILE: B-203806

DATE: August 3, 1982

MATTER OF: Vinnell Corporation

## DIGEST:

1. Proposed use of innovative management techniques is acceptable under a solicitation which leaves management organization to offeror's discretion. Extensive reference to various mandatory Army and other regulations, forms, manuals, etc., which generally define nature and scope of services to be provided but do not address managerial problem of how best to deliver services, does not preclude use of nonstandard management techniques.
2. Contention that agency could not "cure" omissions in a proposal by adjusting costs and staffing levels during cost analysis, premised on assumption that offeror did not respond to all requirements of solicitation, is without merit because: (1) offeror did respond to all material requirements and (2) cost analysis did not affect determination of technical acceptability. Furthermore, since results of evaluation and scoring reflect consideration of offeror's cost and staffing inadequacies, we find evaluation to be reasonable.
3. Allegation that proposal should have been rejected for failure to correct staffing inadequacies pointed out in negotiations is without merit in particular circumstances. Record of negotiations shows that result was agreement that evaluators did not understand proposed management approach and that clarification of this point could correct half of the deficiencies. Determination that best and final offer which added some staffing and clarified management approach was acceptable is therefore reasonable.

4. Solicitation provision to the effect that offerors must provide own automatic data processing (ADP) facilities for matters "such as general accounting, cost accounting, employee records, procurement, payroll and related items" does not limit permissible ADP uses to these few specific applications and offeror's proposed innovative use of ADP as management tool is therefore not improper. Offerors were not prejudiced by agency's failure to evaluate additional costs of implementing system which were insignificant and would not have affected outcome of procurement.
5. Offeror's proposed use of personnel obtained through a program funded under the Comprehensive Employment Training Act is not improper because not precluded by the solicitation. Furthermore, cost effect of participation was not sufficient to prejudice other offerors.

Vinnell Corporation (Vinnell) protests the Department of the Army's award of a cost-plus-fixed-fee contract to Boeing Services International, Inc. (Boeing), for base operations and support at the National Training Center (NTC), Fort Irwin, California. We deny the protest.

The Army initiated this procurement in October 1980 by issuing a request for proposals (RFP) for a cost reimbursement contract for the performance at NTC of eight functions identified as (1) administration, (2) logistics support, (3) real property support and maintenance, (4) equipment maintenance, (5) utilities, (6) transportation, (7) security, and (8) operations. As amended, the RFP identified the five principal factors on which the Army would base the evaluation and scoring of proposals in order of descending importance as follows: (1) technical proposal, (2) corporate commitment, (3) management proposal, (4) experience, and (5) cost proposal. The first two factors were significantly more important than the remaining three. The RFP also advised offerors that the procurement was subject to a cost analysis by the Government under Office of Management and Budget (OMB) Circular No. A-76 to determine whether it would

be in the Government's best interest to perform the services in-house or by contracting for base management, called "contracting out." The cost analysis was to be performed by comparing the Government's in-house cost estimate to the most probable cost (the cost the Government is most likely to pay based on a cost analysis of proposals) of the proposal considered most advantageous to the Government. Of the 15 offerors, eight were determined to be in the competitive range. All eight of these offerors submitted best and final offers.

Boeing's proposal was based on an innovative management approach combining the heavy use of automatic data processing (ADP) techniques with extensive cross utilization of cross-trained personnel and centralization of the scheduling and operations control functions to reduce both staffing and supervision. (We understand that the details of Boeing's approach are proprietary and will not discuss them.) The other seven offerors all proposed more nearly traditional or Army-similar approaches to project management.

The Army's evaluation of best and final offers resulted in scores ranging from a high of 92 (out of 100) to a low score of 79, decimals omitted. The evaluation results are summarized below (scores are omitted; numbers indicate relative ranking in each evaluation category; "Overall" cost rank reflects relative most probable cost.):

Offeror	Proposal Rankings					Overall	
	Tech	Corp	Mgt	Expr	Cost	Tech	Cost
Pan Am	1	1	2	3	3	1	5
Boeing	2	4	4	4	8	2	1
RCA	6	2	3	2	1	3	4
FEC/ITT	4	5	1	3	5	4	8
Dynallect	5	3	6	6	2	5	7
Bendix	3	8	5	8	6	6	6
Global	7	6	8	5	4	7	3
Vinnell	8	7	7	7	7	8	2

Although Boeing was ranked as high as second only under the most important of the five evaluation factors, technical proposal, and was the lowest ranked offeror under the least important factor, cost proposal, Boeing's overall score made it the second ranked offeror. And,

although Boeing's cost proposal was the lowest ranked by a substantial margin for cost realism and reasonableness of fee, it was the highest ranked for previous cost performance based on the Army's evaluation of Boeing's proposal and on verification of Boeing's performance on similar contracts. This verification included confirmation of Boeing's assertion that its approach to project management required approximately 25 percent less staff than did more traditional approaches.

The Army's cost analysis to evaluate cost realism and determine each offeror's most probable costs resulted in an adjustment to Boeing's proposed costs of 39.7 percent; other offeror's costs were adjusted by amounts ranging from -2.3 to 35 percent. Despite the substantial increase to its proposed costs, Boeing's most probable costs were more than \$5 million less than those of Vinnell, the lowest ranked but second lowest cost offeror, and more than \$9 million less than those of the highest ranked offeror.

The Army considered the four top-ranked offerors, all with evaluation scores above 85, to be equal technically and selected Boeing's proposal as the most advantageous to the Government on the basis of its lowest cost. Boeing's proposal was then compared to the Government's in-house estimate. Based on this evaluation, the Army determined that it would be more economical to contract for base management services and awarded the contract to Boeing.

Vinnell raises several challenges to the Army's selection of Boeing which may be divided into three principal objections: (1) Boeing's proposed use of innovative management techniques was "nonresponsive" to the requirements of the RFP; (2) on the premise that Boeing's proposed staff levels (and resulting costs) were so low that Boeing could not have offered to meet all of the contract requirements, Vinnell contends that the Army could not properly cure Boeing's apparent omissions by adjusting Boeing's costs to the extent that was done in the Army's cost evaluation; alternatively, Vinnell argues that all offerors should have been afforded an opportunity to respond to the apparently reduced requirements which the Army found acceptable in Boeing's proposal; and (3) Boeing's initial proposal must have contained staffing

inadequacies which were brought to Boeing's attention during negotiations and which Boeing failed to cure in its best and final offer; Vinnell contends that the Army should have rejected Boeing's proposal for failure to cure these deficiencies. We will treat each of these contentions in turn.

As a threshold matter, we point out that the concept of "responsiveness"--whether a bid conforms with all of the material terms and conditions of a formally advertised solicitation--is generally not applicable to negotiated procurements such as was conducted here. The term is often used in negotiated procurements, however, to indicate that certain terms and conditions are material and that a proposal which fails to conform to them may be considered unacceptable. Computer Machinery Corporation, 55 Comp. Gen. 1151, 1154 (1976), 76-1 CPD 358. We believe the term is used in this context here.

We point out also that our review of an agency's determination that a proposal is acceptable is limited to determining whether the agency's assessment of the merits of the proposal had a reasonable basis and was not arbitrary, capricious, or in violation of the procurement regulations. Centurion Films, Inc., B-205570, March 25, 1982, 82-1 CPD 285; General Technology Applications, Incorporated, B-204635, March 22, 1982, 82-1 CPD 266; Joule Technical Corporation, B-197249, September 30, 1980, 80-2 CPD 231. Our review of an agency's evaluation of the cost realism of a proposal is subject to the same standard of reasonableness. Support Systems Associates, Inc., B-200332, February 9, 1982, 82-1 CPD 112; Applied Financial Analysis, Ltd., B-194388.2, August 10, 1979, 79-2 CPD 113.

Before proceeding to the merits of Vinnell's protest, we note also that we have reviewed numerous documents, such as Boeing's proposal, individual evaluator's worksheets, other internal Army documents, and the Army's cost analysis of Boeing's proposal, to which Vinnell has not had access. As Vinnell recognizes, we have stated that we may properly consider documents which have not been furnished to the protester or other parties in deciding a bid protest. Systems Research Laboratories--Reconsideration, B-186842, May 5, 1978, 78-1 CPD 341.

Vinnell's first contention, echoed in some degree by other interested parties, that Boeing's management approach was not responsive to the RFP is based on the conclusion that the RFP required Army-similar management. In support of this position, Vinnell points to section 6 of the statement of work (SOW) which contains an extensive chart (more than 55 pages) of various Department of Defense (DOD), Army, and other regulations, manuals, standards, forms, and other documents. Each of these various items is cross-referenced in the chart to the eight functional areas identified in the RFP and is identified as being either mandatory or advisory with respect to those functional areas to which it pertains. Vinnell concludes that since the majority of these documents were mandatory--and offerors had to consider these requirements in their proposals--that the solicitation required that proposals be based on Army-similar or traditional management approaches to the exclusion of other concepts. In support of Vinnell's position, Pan Am indicates that the Army took exception during negotiations to Pan Am's cross-utilization of personnel from other functions for the training and audiovisual unit; Pan Am reports that the Army stated that this function was "not organized in accordance with AR [Army Regulation] 108-2." Pan Am also points to the Army's expressed preference for implementation of the Army-standard Morale Support Activity (MSA) as further evidence of the Army's requirement for an Army-similar approach to project management.

We do not agree that these various documents mandate any particular managerial or organizational concept for the entire NTC. To the contrary, based on our survey, we find that this material generally covers only such questions as how and how often a task is to be performed and the attendant recordkeeping. We recognize that there are some exceptions--AR 108-2, for instance, to which Pan Am refers above, virtually requires the consolidation of all audiovisual functions into one organization under a single manager. In our view, however, these documents, particularly when read in the context of the SOW, do little more than define the nature and scope of the service to be provided without addressing the managerial problem of how best to deliver the service. Contrary to Vinnell's position, we believe that the latter question was

left to each offeror's discretion, as exemplified in paragraph L-46 of the RFP, "Organizational Approach," which states:

"The eight functional areas described in the SOW do not dictate that there be eight corresponding organizational elements to perform them. Rather, each offeror may submit its proposal based on the organization which it thinks can most effectively and economically perform the functions. Offerors must use care, however, to ensure that all contractual requirements are adequately covered in their organizational approach."

This is also consistent with the mandate of DOD Instruction No. 4100.33, February 25, 1980, which requires DOD components to:

"Ensure that contracts resulting from reviews conducted under this instruction:

\* \* \* \* \*

"Are performance oriented to the maximum extent possible rather than prescribing in detail a single approach for the accomplishment of the work."  
Pages 2-3.

A similar mandate appears in the instructions in the DOD Cost Comparison Handbook, DOD 4100.33-H, April 1980, that the SOW "should clearly state what is to be done without prescribing how it is to be done" (Emphasis in original.), page 6. Consequently, we believe Boeing's innovative management techniques were within the bounds of the solicitation.

With regard to Pan Am's comments, we note that Boeing did propose to organize NTC's audiovisual function into a single unit under individual management consistent with AR 108-2. Also, like Pan Am, Boeing was considered inadequately staffed in the MSA area and had its staffing and costs for this function adjusted upwards in the Army's cost evaluation,



although not to the same level as were Pan Am's because the Army's technical evaluation committee was of the opinion, based on Boeing's proposal, that Boeing could perform this function with fewer personnel. In this connection, we also disagree with Pan Am's assertion that the fact that the Army raised Pan Am's proposed staff level to 70, the same number used in the Government's in-house estimate, is evidence of the Army's preference for traditional management; contrary to Pan Am's contention, we think this fact evidences nothing more than the Army's view that traditional management required more personnel. We find nothing unreasonable in the Army's assessment.

Vinnell's second contention, that the Army could not properly cure the apparent omissions in Boeing's proposal by adjusting Boeing's costs, is premised on an underlying assumption that Boeing's proposed staff and cost levels were so low that Boeing could not have responded to all of the contract requirements. In response to this allegation, we examined the individual evaluator's scoring and comments, the Army's evaluation summaries, and Boeing's proposal, using a matrix included in Boeing's best and final offer which cross-indexes the several volumes of the proposal to the requirements stated in the RFP. Contrary to Vinnell's suggestion, we find that Boeing did respond to all of the material requirements of the solicitation, although frequently not in great detail--which appears to have been a major contributor, along with questions concerning Boeing's staffing, to Boeing being ranked lower than other offerors in each of the individual technical evaluation areas.

The second aspect of Vinnell's contention--that the Army could not "cure" Boeing's deficiencies and omissions by adjusting Boeing's costs--reflects a misunderstanding of the nature of the procurement. The acceptability or quality of offerors' proposals was determined through the technical evaluation, as was clearly stated in the RFP. The cost analysis was a separate function which was not related to and did not affect the outcome of the technical evaluation except to the extent that it had an impact on the evaluation of the cost proposals for cost realism. Boeing was in fact the lowest ranked offeror for cost realism.



As we stated above, our review of this matter is limited to determining whether the Army had a reasonable basis for its finding that Boeing's proposal was acceptable. We have consistently held that procuring officials enjoy a reasonable range of discretion in the evaluation of proposals and that we will not disturb their determination unless it is shown to be arbitrary or in violation of the procurement laws and regulations. Dynallectron Corporation, B-199741, July 31, 1981, 81-2 CPD 70. Based on our review of the record, we find that Boeing addressed all of the material requirements of the solicitation and that Boeing's major deficiencies were the result of failing to be sufficiently specific and proposing inadequate staff. As we pointed out above, these factors were taken into account in the evaluation and scoring of Boeing's proposal. Consequently, we find no basis upon which we might conclude that the Army's evaluation of Boeing was unreasonable.

Vinnell's third principal contention--that the Army should have rejected Boeing's proposal for failure to correct staffing deficiencies pointed out in negotiations--is without merit in the circumstances present here. The Army's negotiations memorandum concerning Boeing indicates that staffing deficiencies were in fact discussed at some length, but that the principal result was an apparent agreement that the Army did not fully comprehend Boeing's management concepts and a clear indication that about half of the deficiencies could be rectified by clarifying Boeing's management approach. As a result, Boeing increased its staffing and devoted considerable material to explaining its project management in its best and final offer. In these circumstances, we find the Army's apparent judgment that Boeing had adequately corrected the deficiencies pointed out during negotiations to be reasonable.

Vinnell has raised several additional objections, not directly related to its principal contentions discussed above, on which we will comment only briefly.

Vinnell contends, for instance, that Boeing's use of ADP equipment for managerial purposes was impermissible because the RFP limited the contractor's use of ADP to "general accounting, cost accounting, employee records, procurement, payroll and related

items" and questions whether the costs of Boeing's ADP efforts were considered in the Army's cost evaluation. Vinnell relies for this contention on a provision in the solicitation which described the Army/DOD systems which the contractor was required to support--and for which NTC would provide computer time--and continued on to say that the contractor would have to provide its own ADP resources for matters "such as general accounting \* \* \* and related items." We do not share Vinnell's view that this provision limited offerors' use of ADP to these few specific applications which we consider to be little more than examples since they are introduced by the language "such as." On the other hand, we must agree with Vinnell that the Army does not appear, on the record before us, to have considered the additional cost of implementing Boeing's ADP system beyond the personnel costs identified in Boeing's proposal. We find, however, virtually no way in which the relatively small cost of the needed equipment identified in Boeing's proposal could have any significant impact on the more than \$5 million difference between Boeing's proposal and that of the next lowest offeror.

Vinnell and other interested parties have also questioned the Army's assessment of Boeing's proposed staffing costs by contending both that Boeing did not include holiday and vacation pay in its costs and that Boeing proposed the use of employees funded under the Comprehensive Employment Training Act (CETA), which would reduce Boeing's staff costs. In this latter regard, Pan Am asserts that no CETA funding has been approved for NTC and that Boeing should therefore not have been credited with any CETA funding in the computation of Boeing's personnel costs. With respect to the first contention, we note that Boeing did, in fact, estimate its personnel costs based on a full year of effort which included allowances for "non-productive" time, i.e., holidays, vacations, etc. The second contention is an allusion to Boeing's proposed participation in the Private Sector Initiative Program (PSIP) for the training and employment of the underemployed and structurally unemployed. In this respect, the record shows both that Boeing had a tacit agreement for participation in the PSIP program, contingent upon final approval after the award of the contract, and that the

potential effect on the Army's reimbursement to Boeing for salaries was relatively insignificant, amounting to substantially less than \$300 thousand in the first year. Since the solicitation did not preclude participation in PSIP or any other such program and Boeing's participation was therefore not improper, and since the effect of Boeing's participation would not have influenced the outcome of the procurement, we see no need to consider the matter further.

Finally, Vinnell contends that the Army's award of the contract to Boeing was procedurally defective because the award occurred prior to the 15-day public review period for the Army's cost comparison study contrary to instructions in the DOD Cost Comparison Handbook, DOD 4100.33-H, supra. The requirement to which Vinnell alludes originates in Defense Acquisition Regulation (DAR) § 7-2003.89(a) which governs the conduct of formally advertised procurements. As a negotiated procurement, however, the NTG procurement would be governed by DAR § 7-2003.89(b) which permits award of the contract prior to the public review period. Consequently, we find no impropriety here.

In sum, we find the Army's evaluation and acceptance of Boeing's proposal to have a reasonable basis. The protest is denied.

*Milton J. Arnold*  
for Comptroller General  
of the United States